S.B. Civil Misc. Appeal No.633/2006

Gram Panchayat Banar and another.
vs.
Chuna Ram and others.

Date : 28.7.2006

HON'BLE MR. PRAKASH TATIA, J.

Mr. CR Jhakar, for the appellants.
Mr. BV Thanvi, for the respondents.

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At the request of the learned counsel for the parties, this appeal is heard finally and decided.

The trial court dismissed the suit of the plaintiffs on the ground that the plaintiff did not serve the notice under Section 109 of the Rajasthan Panchayat Act before filing the suit against the Gram Panchayat and the Sarpanch of the Gram Panchayat as well as other government officers for which notice under Section 80 CPC is required. The first appellate court set aside the judgment and decree of the trial court rejecting the plaint on the ground that the action of the Gram Panchayat does not find place in the First Schedule of the powers of the Gram Panchayat given in the Panchayat Act and, therefore, where the action of the Gram Panchayat of raising Sabha Bhawan is within their jurisdiction or not, is the issue involved and that can be decided in the suit.

It is not in dispute that during the pendency of this litigation, the petitioners/defendants have already constructed the building. The plaintiff also submitted application for amendment of the plaint seeking relief of the removal of building also. In these facts and circumstances, it appears that the entire action of the Gram Panchayat is under challenge. There is no reason to not to follow the procedure prescribed for filing the suit against the Gram Panchayat and its officers, particularly in this case, now there remains no urgency. The plaintiff should follow the procedure before fiing the suit against the Gram Panchayat.

In view of the above, this appeal is allowed, the order of the first appellate court dated 14.2.2001 is set aside and the plaint shall stand rejected for want of notice under Section 109 of the Panchayat Act.

However, it is made clear that the plaintiff shall have liberty to file fresh suit after serving notice under Section 109 of the Panchayat Act and notice under Section 80 CPC to the defendant no.4 – State of Rajasthan.

(PRAKASH TATIA), J.

S.Phophaliya